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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,550	04/10/2006	Teruie Takemasu	2006_0522A	8964
513 7590 08/28/2009 WENDEROTH, LIND & PONACK, L.L.P. 1030 15th Street, N.W., Suite 400 East Washington, DC 20005-1503				
EXAMINER				
PATEL, BHARAT C				
ART UNIT		PAPER NUMBER		
3724				
MAIL DATE		DELIVERY MODE		
08/28/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/575,550

Applicant(s)

TAKEMASU ET AL.

Examiner

BHARAT C. PATEL

Art Unit

3724

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 13-30.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Ghassem Alie/
Primary Examiner, Art Unit 3724

Continuation of 11, does NOT place the application in condition for allowance because: In response to the Applicant's argument that (1) Wada '018 reference does not teach that the tool will jump when vibrations are applied via the vibrator; (2) Wada '147 does not teach or suggest a configuration in which the boring tool separates from the vibrator when the vibrator applies ultrasonic vibrations to the boring tool; and (3) Because the Examiner has provided no reasoning for providing a spherical surface as recited in the claims 19 and 22 other than improper hindsight.

In response to the Applicant's argument (1), the Examiner respectfully disagrees. It should be noted that Wada '018 discloses in Fig. 1, two separate parts 7 and 11 separated by drawing of solid line, and also supported by two independent sets of preloaded springs 15, 22 and 16 sets of springs. Thus, the system allows a momentary detachment between two parts until the spring force and the actuator force synchronize. However, to support this phenomenon, Wada '147 reference is utilized stating that piezoelectric frequencies are too high to allow spring to restore the tool into constant contact with the vibrator because the response time of a mechanical spring is too slow; this results in "bouncing" of the tool. Therefore, the Examiner considers that Wada '018 reference do teach that the tool will jump when vibrations are applied via the vibrator.

In response to the Applicant's argument (2), the Examiner respectfully disagrees. The Examiner has utilized the reference of Wada '147 to explain the difference between too high frequencies of piezoelectric vibrator and response frequency of the mechanical spring. Therefore, as discussed above, the Examiner considers that Wada '018 reference do teach that the tool will jump when vibrations are applied via the vibrator.

In response to the Applicant's argument (3), the Examiner respectfully disagrees. It would have been an obvious matter of design choice to make the different portions of the punch of whatever form or shape was desired or expedient in order to eliminate noise by contacting at sharp edges or eliminate stress/strain point at sharp edges. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47. In this case, the shape of the head of the punch is not a factor in transferring the ultrasonic vibrations from the vibrator to the punch. Any shape, as long as there is a contacting surface, will transfer the vibrations.